APPENDIX A

IN THE COURT OF APPEALS SEVENTH APPELLATE DISTRICT

No. 268

MARGARET DISS DIX, *et al*, *Plaintiff-Appellees*

v.

THE LAKE BRADY SPIRITUALIST CAMP ASSOCIATION, *et al*, *Defendant-Appellants*

Journal Entry

This cause came on for trial de novo upon the appeal on questions of law and fact, assignments of error bill of exceptions, transcript, amended pleadings, and the evidence, and upon the arguments of counsel and the briefs, the issues were submitted to the Court and upon subsequent motion of Appellees to dismiss.

IT IS ORDERED that the subsequent motion of appellees to dismiss this appeal be and is hereby overruled.

Upon consideration whereof, the Court finds upon the issues joined in favor of the Plaintiffs and the individual Defendants and against the Defendant-Appellant, The Lake Brady Spiritualist Camp Association, and that the said Defendant-Appellant has by its course of conduct during the continuance of the leases in question waived all of the covenants of said leases except the covenant to pay rent and the agreement to pay taxes and has so treated this covenant that it has waived all rights under it except the right to collect past due installments of rent and future rentals as they accrue as provided in said leases.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Defendant, The Lake Brady Spiritualist Camp Association, be and it is hereby permanently enjoined from attempting to cancel the leases of the Plaintiffs and individ-

ual Defendants herein who are in possession of the sublots and parcels described in Plaintiffs' petition through or under the written leases issued by the Defendant, The Lake Brady Spiritualist Camp Association. The said Lake Brady Spiritualist Camp Association is permanently enjointed from evicting or attempting to evict the lessees, or persons holding under said lessees. The Court further finds that said leases are valid and in full force and effect and enjoins any interference by the Defendant, The Lake Brady Spiritualist Camp Association, with the peaceable enjoyment of the individual Plaintiffs and Defendants under their leases except the right to collect rent as the same may be due in the past, present and future, and the agreement by said lessees to pay taxes to the Treasurer of Portage County, Ohio, as the same may be assessed by the Portage County Auditor.

It is FURTHER ORDERED that the Trustee and Escrow Agent named by Journal Entry of the Common Pleas Court of Portage County, Ohio, be and is hereby directed and authorized to pay over the money to the Appellant, The Lake Brady Spiritualist Camp Association, received and held by him as lease rentals for the years 1961, 1962 and 1963.

It is FURTHER ORDERED that the costs of this appeal be assessed against the Defendant-Appellant, The Lake Brady Spiritualist Camp Association, and that a special mandate issue to the Common Pleas Court of Portage County, Ohio, for execution upon this judgment and costs.

Exceptions allowed to Appellant.

APPENDIX B

IN THE COURT OF APPEALS SEVENTH APPELLATE DISTRICT

No. 268

MARGARET DISS DIX, *et al*, *Plaintiff-Appellees*

v.

THE LAKE BRADY SPIRITUALIST CAMP ASSOCIATION, *et al*, *Defendant-Appellants*

Findings of Fact and Conclusions of Law

FINDINGS OF FACT

Upon the application of the Appellant requiring this Court to state in writing the conclusions of fact found separately from the conclusions of law, the Court, therefore, finds as to its conclusions of fact as follows:

1. It appears from the record that the lessor in the leases, the Appellant herein, knew that the lessees in various instances had sublet the premises but they continued to accept the rent and made no objection to permitting the lessees to continue to occupy the premises.

2. Likewise, the Appellant made no objection to the assignment or transfer by the lessee of the leases and permitted and continued to permit the transferee or assignee to occupy the premises even though the leases provided that they should not be transferred without written consent of the Board of Directors; however, no specific penalty was provided for the violation of the foregoing provision.

3. The lessor permitted the lessee in many instances to mortgage or hypothecate to various banks in Portage County the buildings and homes located on the premises in question *without objection* and the lessees have accordingly mortgaged and re-mortgaged, financed and re-financed, over the years with full knowledge upon the part of Appellant that the same was being done.

4. In addition, Appellant waived the provision over the years that the lessee must maintain membership in the Association as we find that many of the parties, both Appellees and Defendants in the Court below, are not members but are lessees. This was further confirmed by the issuance in many cases of new leases in place of or in substitution of a former lease approved and issued by the Appellant through its then duly acting officers.

5. The Appellant further waived the right to inspection, sanitary conditions, and appearances of the houses on the leased premises.

6. At no time was any declaration made by the Association to the lessee until the letters mailed by Mr. Weingarten from his office in Baltimore, Maryland in March 1959. This was not the principal place of business of the corporation which was at Brady Lake, Ohio, and thus, the notification by him in those letters was unreasonable and constituted an ultra vires act on the part of the corporation.

7. Prior to the filing of the original petition in the Common Pleas Court of Portage County, Ohio, the Appellant had filed two eviction cases against two of the lessees, who are Defendants herein, in the Ravenna Municipal Court.

CONCLUSIONS OF LAW

Coming now to the conclusions of law found separately from the facts, the Court finds:

1. That the Appellant, Lake Brady Spiritualist Camp Association, has by its course of conduct during the continuance of the leases and over many years waived all of the covenants of the leases except the covenant to pay rent and to pay taxes.

2. Equity abhors a forfeiture and, of course, the Appellant has waived its right of forfeiture by its course of con-

duct in permitting the leases to be assigned, transferred, and the premises to be sublet and mortgaged.

3. Appellant, having waived by its course of conduct, the Court will not enforce the forfeiture provisions of the leases nor the restrictions or restraints against assignments, alienations or hypothecation.

4. A breach of a condition in a lease renders the lease voidable *only* but not void and the lessor must declare a forfeiture by some positive act giving the lessee the opportunity to correct or adjust the condition complained of.

5. The Appellant made no legal declaration of a forfeiture.

6. The Court finds that the Appellees had no adequate remedy at law and this Court has jurisdiction of the issues.

7. Based on the foregoing, the Court finds the leases are valid and in full force and effect and the Appellees and the individual Defendants are entitled to peaceable enjoyment of their respective premises under the leases except to the provision for payment of rent and payment of taxes.

8. There having been a waiver by the course of conduct of the Appellant, and the Court finding that it has jurisdiction and that the penalty and forfeiture clauses of the leases cannot be enforced, the Appellees are entitled to be awarded a permanent injunction against the Appellant from evicting the lessees or persons holding under the lessees.

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Judge, and

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Judge of the Ninth District sitting by Assignment in the Seventh District